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Current Topics.

The Food Orders.

WE PRINT elsewhere the new Defence of the Realm Regulations, which are intended to enable the Board of Trade to make orders regulating the supply and distribution of food, and also the substance of the orders already made under them. We have frequently noticed the very general nature of the powers given by the Defence of the Realm Consolidation Act, 1914, to make regulations "for securing the public safety and the defence of the realm." Theoretically, these words cover any steps the Executive think proper to take. Practically, they must be limited by the necessity for securing, subject only to the requirements of public order, the full expression of opinion on all matters relating to the war. But in present conditions, and with the present outlook, no exception is likely to be taken to any steps which the Government think proper to take in regard to food supply.

The Germanising of Russian Poland.

THE FUTURE of the divided parts of Poland is a matter on which it would be useless to speculate; this is one of the by-products of the war which does not directly concern this country, and it must be left to the future to determine whether there shall be a united Poland under Russian sovereignty, or whether the part which is now Russian shall be transferred to German domination. An important question of International Law is, however, involved in the attempt on the part of Germany to turn her *de facto* occupation of Russian Poland into a *de jure* occupation during the war, and thus to change the nationality of the inhabitants and make them liable to serve as conscripts in the German Army. This, as pointed out in the Allies' protest, which has been issued simultaneously in London, Paris and Rome (*Times*, 20th inst.)—a similar protest has also been issued at Petrograd (*Times*, 19th inst.)—cannot lawfully be done. The protest says:—

It is an established principle of modern International Law that military occupation resulting from operations of war cannot, in view of its precarious and *de facto* character, imply a transfer of sovereignty over the territory so occupied, and cannot, therefore, carry with it any right whatsoever to dispose of this territory to the advantage of any other Power whatsoever.

In giving a *de jure* application to their occupation of these territories, the German Emperor and the Emperor of Austria have not

only committed an illegal act, but have also disregarded one of the fundamental principles on which the constitution and existence of the society of civilized nations are based.

It is also noted that the attempted transfer is a violation of Art. 23 of Convention IV. of the Hague Conference, 1907, which we recently quoted in connection with the Belgian slave-raids (*ante*, p. 50), and which forbids a belligerent to force the subjects of the adverse party to take part in operations of war directed against their own country. The future of Poland is one of the many questions which have emerged from the war, and which, however the war is decided, will tax the capacity of statesmen to the utmost.

The Recovery of Payments of Increased Rent.

A POINT OF considerable importance upon the Increase of Rent, &c., Act, 1915, has been decided by a Divisional Court (RIDLEY and AVORY, JJ.) in *Sharp Brothers v. Uhart* (*Times*, 17th inst.). Section 1 of the Act provides that any increase of rent or mortgage interest in respect of small property as defined in section 2 (1) above the standard rent or rate of interest—that is, the rent or rate of interest prevailing on 3rd August, 1914—shall, notwithstanding any agreement to the contrary, be irrecoverable; but the provision applies only to rent or mortgage interest accruing after 25th November, 1915. A similar provision relating to the payment of "any fine, premium, or other like sum in addition to the rent" is contained in section 1 (2); but here it is provided that, where any such sum has been paid after 25th November, 1915, the amount shall be recoverable by the tenant from the landlord, and may be deducted from rent. No similar provision is made with regard to mere increase of rent, and the statute, therefore, leaves open the question whether, where rent has been increased and the increase paid before 25th November, 1915, and the tenant goes on paying the increased rent afterwards, such later payments can be recovered from the landlord, whether by deduction from rent or otherwise. It should be noticed that, although the critical date fixed by the Act is 25th November, 1915, the Act was not passed, and did not come into operation, till 23rd December. Hence in regard to any payment made between 25th November and 23rd December, it cannot be said that it was made under a mistake of law, supposing that to be relevant. But, indeed, the ordinary rule that money paid under a mistake of law cannot be recovered does not seem to apply where the Legislature has, retrospectively, altered the law. However, the Court decided the point, not on the question of payment by mistake, but on the ground of payment by coercion. The evidence of coercion in the particular case does not appear from the report, and probably it did not in fact exist; but the Court seems to have regarded the fact that the landlord had taken a rent to which under the Act he was not entitled as equivalent in law to coercion. This brings the case within the principle of *Parker v. Great Western Railway Co.* (7 Man. & Gr. 252), where overcharges paid to the defendant company under protest were held to be recoverable. But the application of the doctrine under the present circumstances seems to be by no means clear. The omission in the Act of any express provision on the point is significant, and it may have been thought that, if a tenant chose to go on paying an increased rent, there was no reason for keeping open for an indefinite time a right to demand repayment.

Trial by Jury.

LORD READING's appeal to the legal profession not to require juries in civil suits is, we imagine, not likely to prove successful. The practical difficulty is just this: In the first place, there is a whole class of actions in which the plaintiff's best chance of success is with a jury; we need only mention breach of promise suits, accident suits, and actions for malicious prosecution out of many. In all these cases the plaintiff, especially if a woman, and more especially if a pretty woman, has an initial advantage in the natural tendency of a jury to regard her case with sympathy. It is hardly possible for the solicitor to override his client's preference in such cases, even if he thought it his professional duty to do so. Still less can counsel, instructed to press for a jury, take upon himself the responsibility of disregarding his brief. Again, there is another class of cases—

usually actions of a public nature—in which the defendant's best chance is an appeal to the social and political prejudices of a special jury. Here, again, passion runs strong, and the party who relies on what he persuades himself is the "common sense" of a jury, is not going to load the dice against himself by assenting to trial by a judge. A third more legitimate ground for distrust of trial by a judge alone is the fact that there have been judges whose mode of conducting trials in cases where they had decided opinions did not inspire confidence in the soundness of their judgment. Even a client, confident that he is absolutely in the right, hesitates to risk the chance of having a judge whose bent of mind prevents him from doing justice in a certain class of cases. If economy in the time of juries is to be obtained, we fancy that an Emergency Act will prove necessary, and such Act should provide for trial by a panel of three judges, not a single judge, whenever under the present law a party is entitled to claim a jury as of right. The greater rapidity of trials in the absence of a jury would probably render unnecessary any increase in the number of judges.

Libel and Justification.

THE LIBEL actions brought by the Mayor of Ypres against two newspapers were settled on the terms that the plaintiff should receive £1,300 and costs, so that no questions of law arise. But an interesting point as to the possibilities of a plea of fair comment in similar cases arises on the form of the pleadings. A paragraph in both of the defendant newspapers suggested that the town of Ypres had been stocked with stores for German use, and added that "The traitor Mayor was shot." The Mayor was neither a traitor nor was he shot, and he promptly sued both papers for libel. Justification, of course, was not pleaded, since the story was wholly false, and had been published by the papers in ignorance that it was a mere invention. In this respect, doubtless, it resembles many other stories of alleged treachery, constantly published in the Press with full circumstantial details, which have their origin only in excited imagination; so the papers could not plead justification. But the question arises whether "bona fide comment on a matter of public interest" was capable of being pleaded in such a case. Such a plea, in its common form, states that the alleged libellous statements, in so far as they are statements of fact, are true in substance and in fact, while in so far as they are matters of opinion, they are bona fide comment in the public interest. Now, here it is clearly impossible to say that the statement "the Mayor was shot" is true; he is very much alive, and plaintiff in the actions wherein the plea was required. We suppose the reply to this tangle is that the fact of a man being shot is not part of the libel, which consists entirely in the adjective "traitor" qualifying the substantive "Mayor"; but this rather suggests that the common form plea of "fair comment" is imperfect, and does not exactly express the nature of the defence required.

Contraband and the Condemnation of Ships.

THE DECISIONS of Sir SAMUEL EVANS, P., in *The Hakan* (Weekly Notes, 1916, p. 282) and *The Maracaibo* (reported elsewhere), as to the condemnation as prize of a ship carrying more than a certain proportion of contraband, appear to be a startling reversal of the long-established rule of English Prize Law. Originally, no doubt, the contraband nature of the goods affected the ship, and both goods and ship were condemned. But the practice was relaxed, and the rule was introduced that, if the owners of the ship were not the owners of the contraband, and were not privy to the carriage of contraband, the ship went free, though the neutral owner forfeited his freight (*The Jonge Tobias*, 1 C. Rob. 329; Hall's International Law, 6th ed., p. 666; Wharton's International Law, 5th Eng. ed., p. 751). Such was the law settled by Lord STOWELL, but it did not agree with Continental law, and by the Declaration of London a compromise was arrived at. Art. 40 provided that "A vessel carrying contraband may be condemned if the contraband, reckoned either by value, weight, volume, or freight, forms more than half the cargo." As long as the Declaration of London, as adopted with modifications by Order

in Council, was binding on the Prize Court—that is, so far as not inconsistent with International Law (*The Zamora*, 60 SOLICITORS' JOURNAL, 416)—there was reason, no doubt, for applying this rule, and this was done in *The Hakan*, though the learned President said that he would adopt the same rule, even apart from Art. 40. That was a case of direct voyage, but the same question has arisen in *The Maracaibo* with regard to continuous voyage. Of course, Art. 40 is now out of the way; if it were not, it would be doubtful whether it could be fairly applied, for the Declaration of London does not recognize the doctrine of continuous voyage for contraband generally, but only for conditional contraband. However that may be, *The Maracaibo* had to be decided on English Prize Law alone, and it is not easy to see why the rule established in Lord STOWELL's time should be set aside. In fact, Sir SAMUEL EVANS held that the rule of Art. 40 is now the rule of English law, and applies both to direct and continuous transport. We have never shared in the view that Lord STOWELL had established Prize Law for all time. We urged, for instance, at the beginning of the war that his rule under which the mortgagee of a confiscated ship lost his security ought to be reversed. But this was not done (*The Marie Glaeser*, 59 SOLICITORS' JOURNAL, 8; 1914, P. 218), and Lord STOWELL's rule was maintained in all its strictness. Surely there should be some consistency, and if a harsh rule is insisted on in deference to authority, the same authority might well be invoked in favour of a milder rule. It may be said that the British Prize Court has now only fallen into line with Continental practice, but this is to abandon the leading position which our Prize Law has always held. The Declaration of London had many advantages, though it is temporarily under eclipse, but we do not know why Art. 40, which is opposed to English law, should alone survive, to increase the burden of war on neutrals.

Insurance and Valued Policies.

EVERY POLICY of insurance, except a life policy, is a contract of indemnity reduced to writing, and all that the insurer promises to the assured is that he will indemnify him against damage he may actually suffer during the term of the contract from an insured peril. The parties may assess beforehand, and express as a term of the contract, the probable damage likely to result from the occurrence of any loss insured against, in which case we have a valued policy. But a valued policy is only a particular case of the general rules relating to penalty and liquidated damages, so that, if the effect is doubtful, these rules must be applied to its interpretation. This seems to be the right way of regarding *Blascheck v. Burrell* (Times, 22nd inst.), which SANKEY, J., and the Court of Appeal have both decided in the same way. The plaintiff was financially interested in a lecture tour which Miss ELLEN TERRY was to undertake in the United Kingdom and Australia and New Zealand, and had taken out with the defendant, an underwriter at Lloyds, a policy against loss which might accrue if Miss TERRY were prevented by sickness or accident from attending any performance. The policy had recitals, as well as an operative clause and a warranty clause. The recitals said: "Whereas JOSEPH BLASCHECK . . . has paid . . . to us who have hereunto subscribed our names to insure against loss as follows: viz., to pay £100 for each and every performance . . . from which Miss TERRY is absent." The operative words made the insurers promise "to pay or make good to the assured . . . all such loss as above stated not exceeding the sum of £100 for each performance missed." And the warranty clause went on to warrant "Miss TERRY is only paid for actual performance." The preliminary issue was raised whether or not these clauses created a valued policy or merely a policy of indemnity. At first sight the operative clause seems ambiguous, while the recitals seem clearly to contemplate a valued policy, so that on the general principle—which allows recourse to recitals to explain ambiguous operative clauses—one might expect the policy to be construed as a valued policy. But the general rule of insurance contracts is that they are contracts of indemnity only, unless a provision for liquidated damages expressly appears in the operative words; and in

the absence of such an express stipulation nothing in the recitals is sufficient to create a promise to pay liquidated damages on a valued policy. This was in substance the ground on which both courts held the policy to be merely one of indemnity, although the form of the warranty clause seems to have reinforced this interpretation in the minds of all the judges.

Verdict for Larger Damages than Claimed.

THE FORMS of statements of claims under the Judicature Acts conclude with a claim by the plaintiff for a sum of money as damages, but the rules make no provision for the case where the jury give a verdict for larger damages than the amount claimed. It was laid down in the early part of the last century that, when the jury gave greater damages than the plaintiff had declared for, the contradiction might be cured by entering a *remittitur* of the surplus before judgment, or the plaintiff might amend his declaration and have a new trial. A *remittitur* is not heard of in these days, nor would the privilege of amending a claim and taking a new trial be appreciated by plaintiffs. But by an ancient principle of the law of all civilised countries a judge cannot give more than the petitioner or suitor himself asks, or that which has been submitted to the judge himself on the pleadings or claims. In going beyond this, he would act beyond his jurisdiction. If, therefore, he gives more than the plaintiff seeks, his decree is ineffectual, and may be set aside. In accordance with this principle, the Exchequer Chamber in *Cheveley v. Morris* (2 W. Bl. 1300) reversed a judgment by default for the plaintiff as erroneous where the damages found by the jury, and for which judgment was entered up, exceeded the damages laid in the declaration. The Court refused to allow a *remittitur* to be entered, because the plaintiff had acted oppressively in suing out execution and taking the books of the defendant (who was a gentleman at the Bar) in a very insolent and invidious manner. This being the law, care had to be taken to claim a sum equal to the full amount of the debt as damages. Practitioners went further than was necessary, and it was the habit within living memory to make excessive claims which exposed the plaintiff to ridicule at the trial. The practice at the present day is more reasonable. The amount claimed is more in accordance with the facts, and an insufficient claim may be amended by the judge at the trial (Annual Practice, 1917, p. 466).

The Liability of a Landlord in Respect of a Common Staircase.

It is curious to observe the numerous cases, of which *Groves v. Western Mansions* (Times, 22nd inst.) is the latest example, which are gathering round, but not yet finally deciding, the question of the liability of a landlord for defects in staircases and other parts required for common use of premises which are let out in flats or other separate tenements. Had the courts been content with the reasonable and, it would seem, sufficiently authoritative decision of the Court of Appeal—and a strong Court too, Lord ESHER, M.R., and BOWEN and KAY, L.JJ.—in *Miller v. Hancock* (1893, 2 Q. B. 177), the case would have been simple. There a business visitor to a tenant of offices was injured through the defective condition of the common staircase. The Court held that there was, by necessary implication, an agreement by the landlord with his tenants to keep the staircase in repair, and that from this sprang a duty towards visitors to the tenants to keep it in a reasonably safe condition. In *Huggett v. Miers* (1908, 2 K. B. 278) the Court of Appeal refused to extend the principle to the lighting of the staircase; but that is a matter depending on somewhat different considerations, and the case cannot be regarded as in conflict with *Miller v. Hancock* (supra). In other cases, however, distinctions have been taken which have had the result of largely nullifying that authority. In *Lucy v. Bauden* (1914, 2 K. B. 318) ATKIN, J., limited the extent of the landlord's liability by holding that the defendant's knowledge of the defect was

an essential element. The landlord was liable, indeed, for defects in the common staircase, but only when he was aware, or should have been aware, of them and the defendant was not—when, that is, the defect was in the nature of a trap. This, of course, deprives the doctrine of much of its utility. Premises have to be used, even though a defect is patent, and a landlord should not be able to escape liability by saying that the person injured was aware of the defect. In other words, the duty of the landlord should be, as in effect was held in *Miller v. Hancock* (*supra*), an absolute duty to keep the staircase in repair.

The attack on *Miller v. Hancock* was carried further in *Dobson v. Horsley* (1915, 1 K. B. 634), where a child of a tenant of a room had been injured through falling from a staircase, one of the rails of which was missing. It appeared that the railing was missing at the time of the letting of the room, and the fact that it was missing was obvious on inspection—at least to adults, if not to three-years-old playing with his toys. Hence BUCKLEY, L.J., pointed out that there was no trap, and accordingly the child and his father, who were suing as co-plaintiffs, had no remedy. Here, as in other cases subsequent to *Miller v. Hancock*, it was observed that that was a decision upon the facts of the particular case—a remark which applies just as much, perhaps, to all decisions. It is a maxim of case-law that each decision is concerned only with particular facts, and when it purports to establish a principle wider than the facts require, the excess is liable to be treated as *obiter dictum*. In fact, the idea of *Miller v. Hancock* being based on the “trap doctrine” seems to have been invented by subsequent judges who did not care to place the landlord’s liability as high as seemed proper to the Court of Appeal in that case, and *Dobson v. Horsley* and *Miller v. Hancock* must be regarded as being in conflict.

In *Hart v. Rogers* (1916, 1 K. B. 646) SCRUTTON, J., had to choose whether the duty of the landlord was an absolute duty to repair or only a duty not to set a trap. In that case the question arose out of a defective roof through which water found its way into a flat. It is curious that *Dobson v. Horsley* (*supra*) does not seem to have been referred to, but the learned Judge took a decided view as to the extent of the principle established in *Miller v. Hancock*, and he followed it in preference to the limitations imposed by later cases. “I have,” he said, “carefully considered the language of *Miller v. Hancock*, and have come to the conclusion that, as reported, all the judges imposed an absolute duty to repair on the landlord. I think if the Court, and particularly BOWEN, L.J., had meant merely to impose a liability for traps on the lines of *Indermaur v. Dames* (L. R. 2 C. P. 311), they were quite capable of expressing it in clear words, and would have done so.”

But in the present case of *Groves v. Western Mansions* (*supra*) the Divisional Court (LUSH and BAILHACHE, JJ.) had *Dobson v. Horsley* (*supra*) before them, and they held—though BAILHACHE, J., with hesitation—that the trap theory now holds the field. It may be so, but we have on numerous occasions expressed the view that *Miller v. Hancock* is the better authority, and, since leave to appeal has been given, we hope the matter may now be reconsidered, and the wide principle which the Court of Appeal first laid down confirmed.

Extraordinary Traffic.

ONE of the most troublesome questions in present-day highway law is concerned with the precise circumstances under which traffic along a road becomes “extraordinary traffic” within the intent of the Highways and Locomotives (Amendment) Act, 1878, s. 23, so as to saddle the responsible party with repairing liability in respect of the damage it causes to the road. In two recent cases—*Barnsley British Co-operative Society (Limited) v. Worsborough U. C.* (1916, 1 A. C. 291) and *Abingdon R. D. C. v. City of Oxford Electric Tramways (Limited)* (*Times*, 16th inst.)—the point has come up once more for consideration. Unfortunately, the tendency of British judges of appeal, when the point is delicate and difficult, to uphold the finding of courts below as a decision on a “pure matter of fact” prevents the decisions in the former case—that

of the House of Lords—from being of much assistance to the practitioner. In the latter case *SANKEY, J.*, followed the example of the Law Lords, and directed himself on the question of fact in a manner which rendered his decision in law rather inevitable.

The nature of the statutory provisions as to liability for extraordinary traffic is well known. The object of the statute is clear. It is to impose on a person who makes an undue use of any roads the burden of making good such excess damage to the road. The existence of the damage, and of “extraordinary expenses” caused by the damage, is certified under section 23 of the statute by the surveyor of highways, and it is now reasonably well settled that the *quantum* of these “extraordinary expenses” is the difference between the cost of repairing the particular road used by the traffic and that of repairing the same road prior to the traffic, or of repairing similar roads in the neighbourhood not so used. There are also conditions precedent as to the mode of assessing damage, notice of action, and time within which proceedings are to be commenced, which do not affect the principle of liability.

The point which gives trouble under the statute consists in this. Liability is, in fact, imposed only on two classes of persons: first, those who carry on “extraordinary traffic,” and, secondly, those who carry on “ordinary traffic,” but place on the road an “excessive weight” of such traffic. The two classes are quite distinct, but in practice both points often arise in the same case, with the result that confusion naturally crops up as to the precise *rationale* of the decision given. Indeed, the familiar difficulty of saying whether in any particular case liability for a “dangerous thing” is founded on “nuisance” or on “negligence” is exhibited by many of the leading cases, and the statement of claim usually alleges both “extraordinary traffic” and “excessive weight.” Here we shall confine ourselves to the more important question, that of “extraordinary traffic.”

Ever since 1878 there has been doubt as to what precisely is the difference between “ordinary” and “extraordinary traffic.” But the chief difficulties have gradually been cleared up. In the first place, it is now clear that there are at least two different ways in which “traffic” may become in law “extraordinary.” One occurs whenever a new industry is opened in any neighbourhood—*e.g.*, the opening of quarries or mines in a purely agricultural area. The hauling of traffic by the promoters of the new industry, however moderate in amount, renders them liable for the “extraordinary expenses,” if there are any, thereby occasioned to the road: *Hill v. Thomas* (1893, 2 Q. B. 333). This is an awkward rule from the economic point of view, for it tends to stifle the development of new industries in rural neighbourhoods. Some years ago the opening up of a sugar industry by the planting of beetroot in Lincolnshire was stopped, we believe, because the promoters could not face the heavy expenses for haulage of their beet from the farms to the factories, which the local authorities threatened to treat as “extraordinary traffic.” But the cases also show that in time a novel industry may become an established industry, whereupon its liability ceases: *Hemsworth R. C. v. Micklethwaite* (1904, 2 L. G. R. 1084). Of course, hardly any question of fact is so difficult to decide as the precise moment when a “novel” industry has become an “established” industry. It is no easier than it is to say when a *social novus homo* has become one of the accepted members of society.

In the second place, it is equally clear that very exceptional and excessive user of roads by an old industry may also amount to “extraordinary traffic”: *Hill v. Thomas* (*supra*). But the mere fact that an undertaker of some particular business does an immense or an increasing trade does not make his traffic “extraordinary”; there must be something “abnormal” in his user, such as the introduction of novel vehicles like traction engines (*Whitebread v. Sevenoaks Highway Board*, 1892, 1 Q. B. 8), or the resort to little used roads which prove to be shorter cuts, or freer from traffic, or otherwise more convenient to him. Then, again, the question as to what is “abnormal” or “exceptional” is not easy to decide on grounds of principle, and there is a temptation to call it a “pure question of fact.”

But the chief form in which the problem comes up to-day is neither of those difficulties. It arises from the transformation which is everywhere taking place in the ordinary instruments for carrying traffic. The horse is giving way to mechanical power; carts and wagons are being replaced by motor traction. Now, the extension of motor traffic to new districts does not take place simultaneously; the replacement of old by new vehicles is, of course, tardier in some areas than in others. The result is that it is not easy to lay down any clear principle as to whether or not in any particular case motor traffic is "extraordinary." In *Whitebread v. Sevenoaks H. B.* (*supra*), which was decided four-and-twenty years ago, the Courts treated motor traffic by traction engines as obviously "extraordinary"; but in *Billericay R. C. v. Poplar Union* (1911, 2 K. B. 801) the influence of new times and manners made itself felt, and it was decided that traction traffic is not "extraordinary" if it has become the ordinary traffic of business men in the district.

In the case of *Barnsley British Co-operative Society (Limited) v. Worborough U. C.* (*supra*) the House of Lords has had to consider the peculiar case of a society with many branches which distributes goods from its wholesale to its retail establishments by means of motor traction engines. At first it did so along main roads which had already grown accustomed to such traffic, so that it could not there be called "extraordinary." Then its traffic was diverted to side roads, because the repaving of the main roads had rendered them unsuitable for its engines. It was held that the previous character of the diverted traffic was irrelevant, and that on the side roads it might be treated as "extraordinary." In the case of *Abingdon R. D. C. v. Oxford Tramways* (*supra*), SANKEY, J., had to consider the status of motor omnibuses replacing horse 'buses along country roads, and here, too, he held as a fact that the traffic was "extraordinary." On the whole these decisions seem to carry out the intent of the Legislature.

Correspondence.

Delivery of Particulars to Country Solicitor.

[To the Editor of the Solicitors' Journal and Weekly Reporter.]

Sir,—Writ issued out of district registry. Defendant appears in London. I deliver through my agent there. Defendant obtains order for particulars and interim stay of proceedings. Immediately on receipt of order I prepare and deliver particulars to the (principals) defendant's local solicitors, who return the same, requesting delivery through their "agents."

Was the delivery of the particulars to the local solicitors not effectual and fair in view of the gain of time, the then Assizes fast approaching? Your observation will oblige.

ROBT. SCOTT HOPPER.

Whitley Bay, Northumberland.

November 13.

[The defendant, of course, neither resides nor carries on business in the district, hence he has the option of appearing in London, and he will give as his address for service the office of the London agent. It would seem that this is the place where pleadings, including particulars, should be served: see R. S. C., ord. 12, r. 10; 67, r. 2; *Petty v. Daniel* (34 Ch. D. 123), cited in Annual Practice, 1917, p. 123.—Ed. S. J.]

CASES OF THE WEEK.

Court of Appeal.

SCOTTISH NAVIGATION CO. (LIM.) v. S. O. SOUTER & CO. Re AN ARBITRATION BETWEEN THE ADMIRALTY SHIPPING CO. (LIM.) AND WEIDNER, HOPKINS & CO. (LIM.). No. 2. 24th, 25th, 26th, 27th October; 17th November.

SHIPPING—CHARTER-PARTY—TIME CHARTER—"BALTIC ROUND"—ORDER OF RUSSIAN GOVERNMENT FORBIDDING ANY VESSEL TO LEAVE DURING THE WAR—CLAIM FOR HIRE DURING THE PERIOD THAT VESSEL WAS THUS DELAYED—FRUSTRATION OF ADVENTURE—RELEASE OF BOTH PARTIES FROM FURTHER PERFORMANCE OF CONTRACT.

In two cases charterers of vessels hired for a Baltic round were in the Gulf of Finland at the time war was declared between Russia and Germany. By an order of the Russian authorities no vessel was allowed to leave during the continuance of the war, and both vessels were therefore delayed in Russian ports for an indefinite period. In one case the

charterers gave notice that they cancelled the charter-party, in the other no such notice was given. In a claim for hire by the respective ship-owners, *Sankey, J.*, held in one case that the charterers remained liable; and in the other case, *Bailhache, J.*, on the facts stated in a special case, also gave judgment for the plaintiffs. The two appeals were heard together.

Held, that the enforced delay of the vessels by reason of the war was of such a duration as completely to frustrate the maritime adventure contemplated by the parties within the principle laid down by the House of Lords in *F. A. Tamplin Steamship Co. v. Anglo-Mexican Petroleum Products Co.* (1916, 2 A. C. 397), and the claim for hire, in the circumstances of each case, could not be maintained.

Decision of *Sankey, J.* (1916, 1 K. B. 675), in the first case, and that of *Bailhache, J.* (1916, 1 K. B. 429), in the second case, reversed on this point.

Circumstances in which charterers can exercise an option in the charter-party to cancel contract considered and explained.

One judgment was given in these two cases, which raised the question whether the charterers (the defendants) were liable to pay hire under the terms of the charter-party for the ship hired for what is known as a "Baltic round," after the ship has been forbidden to leave the Baltic during the continuance of the war by a decree of the Russian authorities.

S.S. "DONELLY."

In the first case, *The Donnelly* was hired from the plaintiffs by the defendants for one Baltic round at the rate of £975 a calendar month. *The Donnelly* came on hire on 4th July, 1914, and the defendants duly paid the hire for the first month. They, however, let the ship by sub-charter-party, dated 2nd July, 1914. By the charter-party of 30th June, 1914, it was provided that should Great Britain or other European Power be involved in war, affecting the working of the steamer during the currency of the charter-party, the defendants had the power of cancelling it. The act of enemies and restraint of princes were mutually excepted. *The Donnelly* completed loading her cargo at Hurrpu, and as it was impossible for her to leave the Baltic, war having broken out between Russia and Germany on 1st August, and between Great Britain and Germany on 5th August, the defendants telegraphed the plaintiffs that they cancelled the charter-party. On 1st August the Russian authorities proclaimed martial law in the Viborg district, in which the port of Hurrpu is situated, and issued an order forbidding all vessels to leave. In these circumstances, the plaintiffs, by their writ, claimed for hire of *The Donnelly*. The defendants asserted that no hire was due, because of the frustration of the adventure, or alternatively because they gave notice, as they were entitled to do, to cancel the charter. *Sankey, J.*, held that the doctrine of frustration of the adventure set up by the defendants had no application. That doctrine applied only where the object which both parties had in view was frustrated, whereas here the plaintiffs' object, which was to receive the chartered hire, had not been frustrated by the restraint of princes, nor could they rely on their notice of cancellation, as neither on the date when it was given, nor within a reasonable time thereafter, were they in a position to hand over the vessel free of cargo and free of commitments.

S.S. "AULDMUIR."

The second case, that of the s.s. *Auldmuir*, raised the same point of law, the main difference between the two cases being that no notice purporting to cancel the charter-party was given by the charterers, and the vessel was hired for two Baltic rounds. The case came before this Court on appeal from a decision of *Bailhache, J.*, on a special case, who had held that the charterers continued to be liable for hire. None of the enumerated reasons for cessation of hire had happened, and the adventure had not been commercially frustrated, as under the charter-party the charterers could have laid up the vessel, or have sent her to Continental ports instead of to the Baltic. He also thought that they should have exercised their option of cancelling the charter, as the charter-party expressly provided that in the event of war affecting the working of the steamer the charterers could do this.

THE COURT, having taken time, gave judgment, allowing the appeal of the defendants in each case.

SWINFEN-EADY, L.J., in dealing with the facts of the first case, said the charter-party provided that no voyage was to be undertaken that would involve risk of seizure or capture, and that provision alone was sufficient to preclude the vessel from leaving the Gulf of Finland on and after 1st August, 1914. The clause entitling the charterers to cancel the charter could not apply after the vessel had been exposed to a risk which could not be insured against and had been detained by a Sovereign who had become involved in war, and where the circumstances were such that the charterer was unable to re-deliver the vessel to the owner either immediately or within any reasonable time. There remained the question whether the charterers continued to be liable for the time claimed. In his judgment the parties contemplated from the first a maritime adventure—namely, a Baltic round—to be paid for according to the time occupied, and the enforced delay by reason of the war was of such a long duration as completely to frustrate that maritime adventure. Therefore the contract was at an end, as its further performance became impossible. The effect of what had happened was not merely to suspend liability to pay hire but to dissolve the contract, and therefore there was no contract under which hire could be claimed. The same considerations applied in the case of the s.s. *Auldmuir*. The contract became impossible of performance, and was dissolved, and both parties were excused from its further performance.

BANKES, L.J., in agreeing, said that how the result of this decision might effect the loss on the two innocent parties the Court was not concerned with. But the shipowners had been able somewhat to reduce their

loss by bringing home the crews, whereas had the loss fallen on the charterers, in so far as they had been held liable to continue to pay hire, they would not have been able to reduce it by a single penny.

A. T. LAWRENCE, J., gave judgment to the same effect.—COUNSEL, in the first case, for the appellants, *Sir John Simon, K.C., Sir Maurice Hill, K.C., and R. A. Wright*; in the second case, for the appellants, *Sir John Simon, K.C., Mackinnon, K.C., and R. A. Wright*; for the respondents in both cases, *Leck, K.C. and Raeburn*. SOLICITORS, *Moxley, Teesdale, & Co., for Bramwell, Bell, & Clayton, Newcastle-upon-Tyne; Lowless & Co.; Thomas Cooper & Co., for Dizon Jacks, Newcastle-upon-Tyne; Botterell & Roche, for Botterell, Roche, & Temperley, Newcastle-upon-Tyne.*

[Reported by ESKINE RIDD, Barrister-at-Law.]

High Court—Chancery Division.

Re WALMSLEY AND SHAW'S CONTRACT. Eve, J. 31st October.

VENDOR AND PURCHASER—CONTRACT—RIGHT OF WAY—FORM OF CONVEYANCE—GENERAL WORDS—RIGHT TO LIMIT GENERAL WORDS—CONVEYANCING ACT, 1881, s. 6.

A purchaser agreed to purchase "the following land and buildings, material, &c." In the contract the property was described, but there was no mention of any right of way. There was a cart track leading to the premises over the vendor's land, which had been used for carting coal, &c., to the premises.

Held, that the purchaser was not entitled to have an express grant of way inserted in his conveyance, and that the operation of section 6 of the Conveyancing Act, 1881, must be excluded.

By an agreement, dated 7th May, 1915, the plaintiff agreed to sell and the defendant to buy two plots of land "and buildings, material, &c." On the smaller plot were one habitable and three ruinous cottages and outbuildings. Both plots had formed part of a larger property owned by the vendor for twenty-three years in fee simple. The purchaser had until recently occupied the cottage on the smaller plot under a yearly tenancy agreement with the plaintiff. On the eastern side of the larger plot there was an old public footpath from a public road on the north, and running near the north-east side of the smaller plot over the vendor's land. There was also a cart track near the footpath, which the defendant and the tenants of the cottages had used, as the plaintiff alleged, by permission, as a means of access to the public highway. The defendant claimed to have inserted in his conveyance a grant of a right of way for all purposes over the plaintiff's land from the highway to and from the smaller plot, or that he was entitled to a way of necessity, as otherwise he could only reach the public highway by going over his own land. The draft conveyance contained general words, including the word "ways." It was argued that the words *et cetera* in the contract carried the right of way claimed. By this summons the vendor claimed that the purchaser was not entitled to have any express grant of way over her property inserted in the conveyance, and that the operation of section 6 of the Conveyancing Act, 1881, so far as it might otherwise confer such right of way, ought to be excluded.

EVE, J.—I think the contention of the vendor is well founded. According to the true construction of the contract, I think that the meaning of the words *et cetera* must be limited to the word immediately preceding them—namely, "material," and means something of the same character as material, and cannot include this right of way. But if I am not correct in that view, and the words extend to rights *ejusdem generis* with land and buildings, then they would only include rights appurtenant to land and buildings, and a right of way such as is here claimed clearly cannot be said to be appurtenant or appertaining to the land which is the subject matter of the contract. That is laid down by Fry, J., in *Bolton v. Bolton* (11 Ch. D. 968), where he says:—"In my opinion neither of the ways was either appurtenant or appendant. The common words 'with all ways thereunto appertaining,' strictly and properly speaking, never carry a right of way over another tenement of the grantor, and for this simple reason, that when a man who is the owner of two fields walks over one to get to the other, that walking is attributable to the ownership of the land over which he is walking, and not necessarily to the ownership of the land to which he is walking." In another part of his judgment, Fry, J., said:—"The contract for the sale of the property does not contain any words with regard to the right of way. In my opinion, therefore, the contract was for the conveyance of the premises, with all that was appurtenant and appendant to them, and nothing more." So in the present case the contract was a contract for the sale of these premises, with such rights of way, if any, as were legally appurtenant or appertaining thereto, and nothing more. The track was not the sole means of access to the premises, nor was it made for the use of the occupiers thereof. Counsel for the purchaser relied on *Barkshire v. Grubb* (18 Ch. D. 616) and *Bayley v. Great Western Railway Co.* (26 Ch. D. 434). These cases were sufficiently dealt with by Chitty, J., in *Re Peck and London School Board* (1893, 2 Ch. 315), to show that they do not really help the purchaser here, where the facts fall short of the condition of things existing in either of those cases. The road is a farm cart track used for the purposes of the farm, and not a made road, nor constructed as a means of access to the property contracted to be sold. In my opinion the case falls within the decisions of *Bolton v. Bolton* and *Re Peck and London School Board*, and I see no reason for holding that the purchaser is entitled to any such express grant as he claims. It is also clear on the authorities that it is a case for the exclusion of section 6 of the Con-

veyancing Act, 1881.—COUNSEL, A. Adams; P. Wheeler. SOLICITORS, *Jaques & Co., for Watson, Son, & Smith, Bradford; Hamlins, Grammer, & Hamlin, for Wade & Kitson, Leeds.*

[Reported by S. E. WILLIAMS, Barrister-at-Law.]

ENLAYDE (LIM.) v. ROBERTS. Sargant, J. 8th and 9th November.
LANDLORD AND TENANT—LOSS OR DAMAGE BY FIRE—CUSTOM TO EXCLUDE RISKS CAUSED BY ACTS OF FOREIGN ENEMIES—FIRE CAUSED BY ZEPPELIN BOMBS.

The plaintiff company were assignees of a sub-term demised to one B. by the defendant E. G. R., who had covenanted with B., his executors, administrators and assigns, that she would insure the demised premises against loss or damage by fire, and in case of destruction thereby would rebuild the same. The said B. covenanted to pay the rent and repay E. G. R. the sums expended by her in insuring and keeping the property in repair, except in case of loss or damage by fire. The said E. G. R. insured in an office of repute, but the insurance expressly stated that it was not to cover "loss or damage by invasion, foreign enemy, usurped power, or loss or damage by explosion." The property was destroyed by a bomb dropped from a Zeppelin. The plaintiffs claimed that the defendant had failed properly or insufficiently to insure, or, alternatively, had failed to effect such insurance as covered the loss by fire, which, in fact, happened. The defendant contended that there was a custom excluding such risks as the risk which, in fact, happened. Held, that the words must be read in their ordinary meaning, and the defendant had, in fact, failed to insure against the loss or damage by fire, which, in fact, happened, and was liable to the plaintiffs.

Yuill & Co. v. Dobson (1908, 1 K. B. 220) commented upon.

This was an action raising the question of the incidence of liability for damage caused by enemy aircraft. In the lease of a building granted by the defendant to one Burton, the lessee covenanted that he, his executors, administrators, or assigns would, at his and their own cost, during the term of the lease, well and sufficiently repair, uphold, support, sustain, maintain, amend, paper, whitewash, colour, empty, cleanse, and keep in good and sufficient repair and condition the demised premises except in case of destruction or damage by fire. The defendant, the lessor, on the other hand, covenanted with Burton, his executors, administrators, and assigns, that she (the lessor) would, at all times during the term, insure and keep insured the demised premises against loss or damage by fire in some insurance office of repute, to be selected by the lessor, in the sum of £3,000 at the least, and further that, in the case of destruction of or damage to the demised premises, or any part thereof, by fire, the lessor would, with all convenient speed, spend and lay out all moneys received in respect of such insurance in re-building or reinstating, in a good and substantial manner, the premises so destroyed or damaged, and in case such moneys should be insufficient for such purpose, she would make good such insufficiency out of her own moneys. Burton afterwards assigned the lease to the plaintiffs, after the written consent of the lessor to the assignment had been obtained. In 1915 the demised premises were destroyed by fire. The plaintiffs now alleged that the defendant, in breach of her covenant, had failed to insure the demised premises against loss or damage by fire, or, alternatively, had failed to effect such an insurance as covered the loss or damage "by the fire which, in fact, happened." The plaintiffs alleged, further, or, in the alternative, that if the defendant did, in fact, insure against loss or damage by fire, she had failed to lay out any of the insurance money in reinstating the premises, and had repudiated all liability in respect of the damage by fire, and had claimed that the plaintiffs, under the covenant, were liable to make good the damages. The plaintiffs claimed a declaration that they were under no liability to make good the damage, and also claimed damages for the breach by the defendant of her own covenant. The defendant pleaded that "the said fire was caused by the discharge of incendiary bombs from hostile aircraft." She admitted that she had failed to effect such an insurance as would cover loss or damage by the fire which, in fact, happened, but she contended that such a failure was not a breach of her covenant to insure. She also said that the demised property at all material times was insured and kept insured by her against fire within the true meaning of her covenant, by a policy approved of by the plaintiffs, but that no money had been received by her in respect of such insurance. The defendant, in her pleading, also said:—"It is a usual and well-known custom in all fire policies to exclude risks caused by the acts of foreign enemies, and the said custom was well known to the plaintiffs." The insurance policy effected by the defendant was in the sum of £3,000 with the Sun Insurance. It was in the joint names of the freehold reversioners of the defendant's lease, the defendant herself, and Mr. Burton, and expressly stated that it was not to cover "loss or damage by or happening through earthquakes, invasion, foreign enemy, riot, civil commotion, or military or usurped power"; also "loss or damage by explosion." In the course of the argument it was stated that the freeholders had, after the beginning of the war, insured with Lloyd's against damage by enemy bombs; that the insurance money had been paid subject to an undertaking to apply it in reinstating the premises; and that an action had been commenced by the freeholders against the plaintiffs and the defendant in the present action to recover possession of the demised premises on the ground of breach of lessees' covenants. Counsel for the plaintiffs referred to the other pending action, and there was some discussion whether that action and the present one should be tried together, but ultimately his lordship said that he would decide the question of construction now raised, leaving the question of remedies to be thereafter determined.

The plaintiffs' counsel then contended that in the defendant's covenant there was no limitation on the meaning of the word "fire," which must be construed in its general sense. It was not admitted that there was any such custom as that set up by the defendant, and the onus of proving such a custom lay upon her. But if the case depended on custom, it was insufficient for the defendant to show what custom existed when the lease was granted. One must have regard to the new dangers of fire which were the result of German disregard of military conventions and of the laws of humanity. Counsel for the defendant contended that the covenant as to insurance must be construed in the light of the knowledge possessed at the time when the lease was granted. Such a covenant only extended to accidents by fire which were then contemplated and were usually covered by insurances then in use. A dictionary definition did not govern the matter. The defendant had covenanted to insure in an office of repute, and no such office would grant a fire policy which did not contain an exception from the risk of fire caused by the King's enemies. He referred to Norton on Deeds, p. 56; *Shore v. Wilson* (1842, 9 Cl. & F. 355), and *Yull & Co. v. Dobson* (1908, 1 K. B. 270), *Story on Agency*, 9th ed., paragraphs 96 and 191; *Moore v. Musgrave* (1776, 2 Cooper, 185), and *Bailey v. De Crespigny* (1869, L. R. 4 Q. B. 180, 185). They also tendered evidence to establish the custom pleaded.

SARGANT, J., in his judgment, said:—I have to decide who, under the terms of a lease from the original lessee of the property to an under-lessee, is liable for loss by fire caused by enemy aircraft. It is sufficient to describe the locality as being on the eastern side of the kingdom, and the fire as having occurred in 1915, before the Government scheme of insurance against damage by enemy aircraft was promulgated. The freeholders of the property, whose lease to the defendant, the original lessee, contained a covenant to insure against fire, in the beginning of 1915, when the damage resulting from the employment of German methods became apparent, had insured with Lloyd's their freehold estate against damage by enemy aircraft. That they did not take the precaution to include in their policy the name of the lessees and sub-lessees was a misfortune, but for that the freeholders could not be blamed. The Government did not pay anything to the sub-lessees in respect of their loss because there was an existing insurance on the building in pursuance of the sub-lease. Lloyd's paid on the policy of the freeholders, but made a claim, which would not be expected by the public, that they should be subrogated in the place of the freeholders in respect of their rights against those claiming under them, and an action was now pending in which Lloyd's, in the names of the freeholders, were suing the plaintiffs and defendant in the present action. It may be necessary for me to determine how, as between the parties to the present action, the damage ought to be adjusted. The parties have thought it better that the question of liability as between themselves should be now determined, and that liberty to apply after the other action has been tried should be given. The fact that any of the parties to this action might be held to be under liability leads me to say that I think the Government ought to reconsider whether such a decision as the commission have come to with regard to the sub-lessees' claim ought not to be amended. I am sorry that this has not been done, as the claim seemed to come within the spirit of the cases in which the Government gave compensation where loss had occurred through the earlier German air raids. It is extremely important that the public should fully realize—as it does not seem to do—that it is not sufficient for one person to insure against enemy aircraft risk unless he is the person on whom liability for any loss would ultimately rest. I hope that the Government will adopt a fairer view in favour of those owning less than freehold interest in damaged properties than has hitherto been adopted. Having regard to the questions which might arise as to what persons will be ultimately liable for the damage, it is undesirable that persons ultimately liable should not be protected, although the policies do not contain their names. The lease, which had been assigned to the plaintiffs, was granted by the defendant to one Burton, at a rent of £100 a year, and there was also reserved an additional rent of all sums of money which the defendant might expend in insuring and keeping insured the demised premises "from loss or damage by fire, as hereinafter mentioned." The lessee then covenanted to pay the rent and also to repay to the lessor the sums paid by her "in insuring and keeping insured the said demised premises against loss or damage by fire." Then followed a general covenant by the lessee to keep the property in repair, and so on, "except in case of destruction or damage by fire," and covenants that the lessee would, at the expiration of the lease, give up to the lessor, "damage by fire excepted," the demised premises in good repair, and that the lessee would not do anything whereby "the policy of insurance" "against loss or damage by fire" might be invalidated. The lessor covenanted that she would "insure and keep insured the . . . premises against loss or damage by fire in some insurance office of repute, to be selected by the lessor" in a sum named, "and, further, that, in case of destruction or damage to the said premises, or any part thereof, by fire," she would "spend and lay out all moneys received in respect of such insurance in rebuilding or reinstating in a good and substantial manner the premises so destroyed or damaged," and "in case such moneys shall be insufficient for such purpose will . . . make good such deficiency out of her own moneys." The defendant insured the property against fire in the Sun Insurance Office, and the policy was in a form which exempted the office from liability in case of loss or damage by "invasion, foreign enemy," and so on, which included such damage as had happened in the present case. The plaintiffs said that they were not concerned with the form of

the policy, but relied on the defendant's covenant to insure against "loss or damage by fire." The defendant tendered and gave evidence to show that in all offices of repute it was usual to except fires occurring from causes of the kind now under consideration, and that the policies in many cases contained words similar to those in the Sun Office's policy. Then the defendant said that having put that construction on one part of the covenant, the Court must adopt it throughout the lease, and must read in everywhere as regards "fire" the words "otherwise than invasion or foreign enemy"; that the defendant had been in no default, and that no event had happened in which the defendant was liable to make good the loss. In my judgment this evidence is not admissible, and there is nothing to shew that the words "loss or damage by fire" were not used in their ordinary and primary sense, and the evidence (which was only admitted *de bene esse*) is insufficient to shew that the words were used in any secondary sense or having regard to any custom. A good many policies have been produced, which varied in their terms, but contained exemptions in the case of fires caused by military operations; but to say that words of a covenant were used in a secondary sense, it must be shewn that that secondary sense was, and it is not sufficient to say that the words did not apply to a particular case. There is no such settled practice in framing policies as shews that the words had a definite secondary meaning. The covenant to insure is ancillary to the covenant to reinstate: *Yull & Co. v. Dobson* (1908, 1 K. B. 270). I make a declaration that, as between the parties to the action, the loss falls on the defendant and not on the plaintiffs, and I give the plaintiffs the costs of the action, and give the parties liberty to apply after the trial of the other action.—COUNSEL, *Alexander Grant, K.C.*, and *Joshua Scholefield*; *Mark L. Rorer, K.C.*, and *Foß*. SOLICITORS, *Milner & Beckford*; *Withers, Pollock, & Crow*.

[Reported by L. M. MAY, Barrister at Law.]

Probate, Divorce, and Admiralty Division.

IN PRIZE—"THE MARACAIBO." Sir Samuel Evans, P. 12th October. PRIZE LAW—NEUTRAL SHIP—CONTRABAND—CONTINUOUS TRANSPORT—CONDEMNATION OF SHIP.

The rule laid down in the case of the *s.s. Hakan* (115 L. T. Rep. 389) that neutral vessels carrying contraband of war, which, by value, weight, volume, or freight, forms more than half of the cargo, are subject to condemnation, is not confined to cases where the voyage is direct to an enemy port, but also applies to cases of continuous transport where the initial voyage is to a neutral port.

The *Maracaibo*, of Venezuela, had a cargo for Amsterdam. She was seized by a British warship, and her cargo was subsequently condemned by the Prize Court as contraband of war, and the point now came up for decision, whether the vessel itself was liable to be confiscated. *Cur. adv. vult.*

Sir SAMUEL EVANS, P., in giving judgment, said:—This Danish vessel was captured on a voyage from Venezuela to Amsterdam. She carried a full cargo of *divi-divi*. At the time of the beginning of the voyage *divi-divi* had been declared conditional contraband. Before the capture it had been declared absolute contraband. The cargo has already been condemned by a judgment of this Court. The questions remaining relate to the vessel. Her owners claim her release, and also freight, costs, and expenses. The Crown asks for judgment for her condemnation. The application of the Crown is founded on two contentions, one of fact and one of law. In the first place it is contended that the vessel is subject to condemnation because her owners, or master—who was also part owner—knew that the vessel was laden with a full cargo of contraband destined ultimately for the enemy at Hamburg; and, further, that they or he participated in the deception by which it was intended and attempted to convey the contraband goods to one Wehl at Hamburg, through a nominal agent or intermediary, named Englebrecht, at Amsterdam. In the second place, it was contended that the carriage of the contraband goods, forming the whole of her cargo, on a continuous voyage or transit which was to end in enemy territory, rendered the vessel subject in law to confiscation and condemnation, whatever the state of knowledge of the owners or master may have been. If the Crown succeeds in the first contention on the facts, the legal question need not be decided. But the question of law has been fully argued; and as it is one of considerable and general importance, and the parties are all anxious that it should be decided, I have thought it right to pronounce the judgment of the Court on this point also. [His lordship stated the facts, and continued:] On the whole of the facts I think the right conclusion is that the master and the owners knew that the goods laden in this vessel were destined for Wehl at Hamburg; and that the master of the ship knew this when he put forward Englebrecht as the *bona fide* neutral consignee in order to form the basis of his support of the owners' claim. It is hardly necessary to add that the claims for release of the ship, and for freight, expenses, &c., are all barred. It remains to consider the question of law. It can be done with more brevity, because I have expressed my views on the penalty attaching to vessels carrying contraband in the judgment pronounced in the case of the *s.s. Hakan* (*supra*). It was argued that the present case is distinguishable from *The Hakan* on the ground that the voyage of *The Hakan* was to an enemy port; whereas the voyage of *The Maracaibo* was to a neutral port; and that her cargo was only condemnable because it was carried over part of a "continuous voyage" to

the enemy in enemy territory. The principles on which *The Hakan* judgment was based, it was said, did not apply to "continuous voyage" cases. It was contended that in the latter knowledge must still be proved, and proved affirmatively, by the captors. There does not seem to me to be any good reason for any such distinction. A vessel may be carrying conditional contraband to an enemy port; but it is only in certain cases—e.g., where it is proved that the contraband was destined to the enemy Government or forces, or for a base of supply—that they can be condemned. A vessel may also be carrying absolute contraband to a neutral port; but again it is only on proof that the contraband goods were destined, by transshipment or land transit, for the enemy country that they are subject to condemnation. The effect on belligerents would be similar in either case. The trade, if successful, would in both cases be injurious to the belligerent entitled to make the capture, and helpful to the enemy. It is difficult to see why the penalty in the case of the vessel should be different. It is to be noted that Article 40 of the Declaration of London applied to the carriage even of conditional contraband by continuous voyage and transit over land, where the enemy country has no seaboard. Knowledge did not enter into the question. The vessel suffered the same penalty. I think that in the present state of the law as agreed and understood between nations the element of knowledge of the owners or master of the vessel has been eliminated altogether, where such a proportion of contraband is being carried as forms half the cargo in weight, bulk, value, or freight. This principle applies, in my view, whenever the vessel carries that proportion or amount of confiscable contraband (absolute or conditional), whatever the circumstances or facts may be which make it subject in law to confiscation. In other words, if a vessel going to a neutral port carries such a cargo as is properly captured as prize because it is absolute or conditional contraband destined ultimately for enemy territory, or for enemy forces or bases of supply, the offence of the vessel is the same as if she were carrying conditional contraband to an enemy port; and it would seem to me that the same penalty in respect of the vessel should follow. If it is not necessary to prove the knowledge of the owners in the one case, it ought not to be in the other. I cannot see the reason for a distinction either in logic or in practice. The trade in contraband, though one in which neutrals may like to engage, is necessarily of a risky nature. Great risks often mean huge profits. But the risks are ascertainable. And if belligerents are to avail themselves of their acknowledged rights to capture at sea, neutrals must, in order to garner the profits, either face the risks and the ensuing penalties or provide for them by their contracts, or protect themselves from them by insurance. The practical rule (adopted in *The Hakan*) of making the quantitative or qualitative extent of the contraband the test instead of knowledge avoids the necessity for the Courts to embark upon the very difficult and often unsatisfactory inquiry into the state of mind or extent of information of the persons concerned. From experience in this Court, I can testify to the difficulty. The tribunal might often feel a certainty that knowledge existed which would satisfy any conscientious person, without being able, perhaps, to set out, step by step, sufficient or precise proof of it. Experience also shews not only the ingenuity and multitudinous character of the devices and shams resorted to in carrying on contraband trading, but how often it is only by the interception of letters, or telegrams, or wireless messages that the deceptions can be detected and disclosed. And even if there is not, in truth, any actual knowledge, is the trader to defeat belligerent rights by taking care not to know, by a species of "voluntary ignorance"? I hazard the opinion that not many of the shipowners or masters of ships belonging to the Scandinavian or Dutch countries are suffering from any want of knowledge of how articles of a contraband character are sent to Germany, either by water or by land, from neutral ports, which could not reach Germany by direct voyages to her own ports. Knowledge of the destinations of such articles in particular cases may be difficult to establish by actual and direct proof. If the rule of law is now as I have stated it, Prize Courts will be able to do substantial justice, and to act in accordance with the law, without any apprehension in the mind of anyone that their conclusions are founded on suspicions rather than on facts established by strict proof. For the reasons given, I decide that on the facts *The Maracaibo* must be condemned on the ground of the knowledge of the owners and their master; and, furthermore, that the principles of *The Hakan* decision apply to "continuous voyages," and that therefore, in law (apart from any question of knowledge), *The Maracaibo* must be condemned.—COUNSEL, *Sir Maurice Hill, K.C.*, and *Theobald Mathew*, for the Procurator-General; *Mackinnon, K.C.*, and *R. A. Wright*, for the shipowners. SOLICITORS, *The Treasury Solicitor*, for the Crown; *Stibbard, Gibson, & Co.*, for the shipowners.

[Reported by L. M. MAY, Barrister-at-Law.]

Maitre Gaston de Leval's Lecture.

We are obliged, owing to pressure on our space, to hold over till next week our report of the lecture delivered to the Solicitors' Managing Clerks' Association on Tuesday evening by Maitre de Leval.

IT'S WAR-TIME, BUT—DON'T FORGET

THE MIDDLESEX HOSPITAL.

ITS RESPONSIBILITIES ARE GREAT AND MUST BE MET.

New Orders, &c.

War Orders and Proclamations, &c.

The *London Gazette* of 17th November, contains the following:—

1. A Proclamation, dated 16th November (printed below), forbidding the importation into the United Kingdom of certain goods without the licence of the Board of Trade.
2. An Order in Council, dated 16th November (printed below), further amending the Defence of the Realm (Consolidation) Regulations, 1914.
3. An Order in Council, dated 17th November, further amending the Proclamation of 10th May, 1916, whereby the exportation from the United Kingdom of certain articles to certain or all destinations was prohibited.
4. A Notice of the appointment of Mr. Stanley Bertram Bagley, of the Mount, Knottingley, to be a Member of the Appeal Tribunal, under the Military Service Act, 1916, for the East Central District of the West Riding of Yorkshire.

The *London Gazette* of 21st November contains the following:—

5. An Order in Council, dated 16th November, extending to the Isle of Man, with certain adaptations, the Defence of the Realm Regulations of 3rd October, 1916 (60 SOLICITORS' JOURNAL 764).
6. The appointment, dated 20th November, of a Royal Commission, consisting of Sir Arthur Moseley Channell (Chairman), Sir Frank Crisp and Sir Alexander Rose Stenning, to inquire into the allegations made against Sir John Jackson (Limited) contained in the Second Report of the Public Accounts Committee (115. 8th August, 1916), and into the terms of the arrangement and agreement made by the War Office with the said Company for the erection of huts for the troops.
7. A Notice that orders have been made by the Board of Trade, under the Trading with the Enemy Amendment Act, 1916, requiring four more enemy businesses to be wound up, bringing the total to 369.
8. An Admiralty Notice to Mariners, dated 17th November (No. 1290 of the year 1916), relating to England, East Coast (River Humber and Approaches—Pilotage and Traffic Regulations). The Notice is a re-publication of No. 932 of 1916 with additional information.

A Proclamation

FOR PROHIBITING THE IMPORTATION OF CERTAIN ARTICLES INTO THE UNITED KINGDOM.

Whereas by Section forty-three of the Customs Consolidation Act, 1876, it is provided that the importation of arms, ammunition, gunpowder, or any other goods may be prohibited by Proclamation:

And whereas it is expedient that the importation into the United Kingdom of certain goods should be prohibited as hereinafter provided:

Now, therefore, &c.

As from and after the date hereof, subject as hereinafter provided, the importation into the United Kingdom of the following goods is hereby prohibited, viz.:—

Jewellery and all manufactures of gold and silver other than watches and watch cases.

Provided always, and it is hereby declared, that this prohibition shall not apply to any such goods which are imported under licence given by or on behalf of the Board of Trade, and subject to the provisions and conditions of such licence.

This Proclamation may be cited as the Prohibition of Import (No. 11) Proclamation, 1916.

16th November.

Defence of the Realm Regulations.

ORDER IN COUNCIL.

[Recitals.]

Now therefore, &c., &c., it is hereby ordered that the following amendments be made in the Defence of the Realm (Consolidation) Regulations, 1914:—

After Regulation 2x the following regulations shall be inserted:—

2x.—(1) Where the Board of Trade are of opinion that it is expedient that special measures should be taken in the interests of the public for maintaining the supply of any article of commerce the maintenance of which is important as being part of the food supply of the country or as being necessary for the wants of the public or for the wants of any section of the public, the Board by order may, with a view to maintaining the supply of the article, apply to that article any of the provisions appended to this regulation.

(2) Any such order may be made either so as to apply generally or so as to apply to any special locality, or so as to apply to any special supplies of any article, or to any special producer, manufacturer, or dealer.

(3) If any person acts in contravention of, or fails to comply with, any of the provisions appended to this regulation he shall be guilty of a summary offence against these regulations.

Provisions which may be applied.

1. A person shall not waste or unnecessarily destroy any article to which this provision is applied; and if the order applying this provision to that article declares that any specified process, action, or

other thing done is waste or unnecessary destruction of the article, that process, action, or other thing done shall be deemed to be waste or unnecessary destruction for the purpose of this provision.

II. Where the order applying this provision to any article specifies the purposes for which the article is to be used, a person shall not (subject to any conditions contained in the order) use the article except for the purposes so specified; and where the order prescribes any special manner in which the article is to be used, a person shall not (subject to any conditions contained in the order) use the article except in that manner.

III. Where the order applying this provision to any article contains any directions or regulations as to the manufacture or production of the article in such a manner as to secure that the public are supplied with the article in the form most suitable in the circumstances, all persons concerned in the manufacture or production of the article shall comply with those directions or regulations.

IV. Where the order applying this provision to any article contains any directions or regulations as to the mode of sale or the distribution of the article with a view to securing that the available supply of the article is put to its best use throughout the country or in any locality, all persons concerned in the sale or distribution of the article shall comply with those directions or regulations.

V. Where the order applying this provision to any article contains any directions or regulations as to the market operations in that article with a view to preventing an unreasonable inflation of the price of the article as the result of market operations, all persons concerned in market operations shall comply with those directions or regulations.

VI. A person shall not (subject to any exceptions contained in the order applying this provision) directly or indirectly sell or offer for sale any article to which this provision is applied at a price exceeding by more than the amount named in the order the corresponding price of the article at a date specified in the order (the corresponding price to be settled in case of difference by the Board of Trade); and where the consideration for any sale or offer consists wholly or partly of any conditions made or offered to be made in connection with the transaction, or is otherwise not of a pecuniary character, the value of the consideration or such part thereof as is not of a pecuniary character, shall, for the purposes of this provision, be taken into account in determining the price of the article.

VII. All persons owning or having power to sell or dispose of any article to which this provision is applied or any stocks thereof shall, if required by the Board of Trade, place at the disposal of the Board the article, or the whole or any part of the stocks thereof as may be required by the Board on such terms as the Board may direct, and shall deliver to the Board or to any person or persons named by them the article or stocks in such quantities and at such times as the Board may require.

Such compensation shall be paid for any article or stock so requisitioned as shall, in default of agreement, be determined by the arbitration of a single arbitrator appointed in manner provided by the order applying this provision; but in determining the amount of the compensation the arbitrator shall have regard to the cost of production of the article and to the allowance of a reasonable profit without necessarily taking into consideration the market price of the article at the time.

2g.—(1) If the Board of Trade are of opinion that information is required with respect to any article of commerce with a view to the exercise of any powers of the Board of Trade in relation to that article, the Board may by order apply the provisions of this regulation to that article; and if the provisions of this regulation are so applied to any article, every person owning or having power to sell or dispose of the article, or concerned in the manufacture or production of the article, shall, subject to any exceptions or limitations contained in the order, make a return to the Board giving such information in such form and within such time as may be specified in the order applying these provisions—

- (a) as to the stocks of the article held by him or consigned to him or under order to him; and
- (b) as to any contracts for the supply to, or by, him of the article or any contracts for, or in connection with, the production or manufacture of the article, or the dealing therein; and
- (c) as to the prices paid by him or received by him for or in respect of the article; and
- (d) as to the cost of production of the article, and the names and addresses of the persons by whom the article has been supplied to him or to whom the article of commerce has been supplied by him; and
- (e) as to any other matters specified in the order applying the provisions of this regulation with respect to which the Board may desire information for the purpose of any of their powers and duties.

(2) For the purpose of testing the accuracy of any return made to the Board under this regulation, or of obtaining information in case of a failure to make a return, any officer of the Board authorized in that behalf by the Board may enter any premises belonging to or in the occupation of the person making or who has failed to make the return, or on which he has reason to believe that any article to which the provisions of this regulation are applied are kept, stored, manufactured, or produced, and may carry out such inspections and examinations (including the inspection and examination of books) on the premises as the officer may consider necessary for testing the accuracy of the return or for obtaining any such information.

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- (3) If any person—
(a) refuses or without lawful excuse neglects to make a return as required by this regulation to the best of his knowledge and belief, or makes or causes to be made a false return; or
(b) obstructs or impedes an officer of the Board in the exercise of any of his powers under this regulation; or
(c) refuses to answer or gives a false answer to any question, or refuses to produce any books or documents required for obtaining the information to be furnished in pursuance of this regulation;

that person shall be guilty of a summary offence against these regulations.

(4) No individual return or part of a return made under this regulation, and no information as to any person or his business obtained under this regulation, shall, without lawful authority, be published or disclosed except for the purposes of a prosecution under this regulation; and if any person acts in contravention of this provision he shall be guilty of a summary offence against these regulations.

2h.—(1) If the Board of Trade, in any special case, are of opinion that, before exercising any of their powers under these regulations in relation to any article, it is expedient to hold an inquiry with respect to that article in any locality, the Board may appoint such persons as they think fit to hold an inquiry as respects that article and report to the Board on such points as the Board may direct.

(2) Any persons so appointed shall have power to take evidence on oath and to administer an oath for the purpose.

2i.—(1) The Board of Trade may make arrangements with any other Government Department for the exercise by that Department on behalf of the Board of Trade of the powers of the Board under the regulations numbered 2f, 2g and 2h with respect to any particular article of commerce, and in such case the Department and the officers thereof shall, as respects that article, have and exercise the same powers as are by those regulations conferred on the Board of Trade and the officers of that Board, and the Local Government Board (or as respects Scotland the Secretary for Scotland, and as respects Ireland the Local Government Board for Ireland) may by arrangement with the Board of Trade confer and impose on any local authorities and their officers any powers and duties in connection with the enforcement of the said regulations numbered 2f and 2g.

(2) Nothing in the regulations numbered 2g and 2h shall prevent the exercise by the Board of Trade of any of their powers in relation to any article under these regulations or otherwise, without having obtained or endeavoured to obtain returns under Regulation 2g or having held an inquiry under Regulation 2h.

(3) Any order of the Board of Trade under the said regulations numbered 2f and 2g may be revoked or varied as occasion requires.

16th November.

Realisation of Enemy Securities.

Mr. George Terrell recently asked the names of the members of the Advisory Committee appointed to act with the Public Trustee in the realization of enemy securities.

Mr. Pretyman replied on Tuesday :—The Committee appointed by the Lord Chancellor for the purpose of examining and criticizing from time to time the investments made by the Public Trustee consists of Mr. F. Huth Jackson, Mr. R. Martin Holland, Mr. R. M. Kindersley, and Mr. J. A. Mullens, jun. This Committee was not appointed in connexion with the duties of the Public Trustee as custodian of enemy property, but I understand that they are prepared to advise him on any point arising in dealing with enemy securities on which he may think it desirable to consult them. The Advisory Committee appointed to advise the Board of Trade on matters arising under the Trading with the Enemy Amendment Act, 1916, of which Mr. Ernest Moon is chairman, and which includes two members of this House, is also available to advise the Public Trustee on questions arising with regard to the sale of enemy property.

War Charities.

The following new regulations have been made under the War Charities Act, 1916, by the Charity Commissioners in substitution for regulations 13 and 16 of those originally issued:—

REGULATION No. 13.—Duly audited accounts of every registered charity shall be sent to the registration authority at least once in every period of twelve months; but the registration authority, with the consent of the Commissioners, or the Commissioners, may call for such accounts at any time. Such accounts shall relate to receipts and expenditure of money only, but, with a view to meeting the requirements of Section 3 (iv.) of the Act, each registered charity shall keep a sufficient record of all their dealings with articles in kind of whatever nature.

REGULATION No. 16.—A registration authority may exempt from the provisions of Section 1 of the Act only charities the scope of whose operations, as regards the amount of subscriptions expected to be received, the duration of the charities, or the area of collection or benefit, is so limited as, in the opinion of the authority, to make it unnecessary, in the interests of the public, that the charities should be registered under the Act; and if at any time it appears to the authority that the character of an exempted charity has materially altered in any of the above respects the authority shall withdraw the exemption.

A second edition (brought up to the 4th inst.) of the official list of war charities entered in the combined register of charities registered under the Act has been issued by the Charity Commissioners. Copies of the list may be obtained at the price of 4d.

Food Orders.

Orders have been made by the Board of Trade under Regulations 2 F and 2 G of the Defence of the Realm (Consolidation) Regulations, 1914 (*supra*), as follows:—

PRICE OF MILK.

The Price of Milk Order, 1916, fixes for Great Britain maximum prices for milk both by wholesale and by retail. These prices, it is stated in the official summary of the Order, have been fixed at figures which should be sufficient to maintain the production of milk. The general effect of the Order is to impose a double limit on prices:—

(1) The price may not be raised above that paid at 15th November, 1916.

(2) The price may not exceed by more than a specified amount the price in the corresponding month before the war. This amount in the case of retail milk is 2d. a quart. The specified amounts that may be added to the pre-war price in respect of wholesale milk are 6½d. per imperial gallon delivered on the premises of the buyer where the conditions of sale include an obligation to deliver not less than a specified minimum, and 5½d. per imperial gallon in other cases.

The Order does not deal with condensed milk, dried milk, or milk preparations. As regards "accommodation milk" and milk sold by retail for consumption on the premises, the Order provides that the price shall not be raised above that paid at 15th November, 1916, but the limit of increase above the pre-war price does not apply.

The Order will come into force on 27th November, 1916, but where contracts made before 15th November for the supply of milk by wholesale provide for a higher price, this higher price may continue to be charged under the contract till 31st December, 1916. Other exemptions are allowed in special circumstances only.

MANUFACTURE OF FLOUR AND BREAD.

The Manufacture of Flour and Bread Order provides that:—

No person shall, except with express authority given by or on behalf of the Board of Trade, manufacture any wheaten flour other than a straight-run flour, or mill any wheat so that the extract of flour obtained therefrom shall bear a proportion to the total product of the mill less than the following percentages:—

	Per cent.
English	76
Choice Bombay	78
Australian	78
Blue Stem	76
Walla Walla	75
No. 2 Red Western	76
No. 2 Red Winter	74
No. 2 New Hard Winter (1916)	76
No. 1 Northern Duluth	75
No. 1 Northern Manitoba Old Crop	76
No. 2 Northern Manitoba Old Crop	75
No. 3 Northern Manitoba Old Crop	73
Choice White Karachi	75
Soft Red Karachi	75
Rosafe, 62lb.	73
Baril, 61½lb.	74
Barletta-Russo, 61½lb.	74

On and after 1st January, 1917, no person shall, except with express authority given by or on behalf of the Board of Trade, manufacture bread of any wheaten flour which has been so manufactured or milled as not to comply with the foregoing provisions of this Order.

This Order shall apply to any articles of food for which wheaten flour is used in the same manner as it applies to bread.

If any question arises as to the meaning of "straight-run flour," that question shall be determined by the Board of Trade.

The Order comes into force, as regards milling, on 27th November next; that is to say, on and after that date no wheat may be milled except in accordance with the above scale. On and after 1st January, 1917, only flour milled in accordance with the scale may be used for making bread or any other article of food.

POTATO STOCKS.

Under an Order requiring a return of stocks of potatoes in Great Britain, a return of potato stocks and contracts must be made not later than 7th December by all persons cultivating more than 10 acres of potatoes on any holding in Great Britain. The Board of Trade have made arrangements with the Board of Agriculture for England and Wales, and the Board of Agriculture for Scotland, respectively, to collect and compile the returns on their behalf and to exercise the powers conferred by the Regulations on the Board of Trade for this purpose.

The two departments mentioned will accordingly issue forms to all persons known to be liable to make the return. Any such persons not receiving the forms before 1st December should communicate with the Board of Agriculture for England and Wales or Scotland, as the case may be, and ask for forms to be sent to them. All other communications with respect to the Order should be addressed to the same departments.

War and the Jury System.

On the 16th inst., says the *Times*, the Lord Chief Justice made a statement from the Bench in which he referred to the hardships which are often inflicted on persons who are summoned as jurymen at the present time.

Lord Reading said:—My attention has been drawn to the difficulty that there is in getting sufficient jurymen into the courts at present. The difficulty arises from the great demands which are made on their time as well as on the time of other persons in the existing emergency. Jurors have lost a number of men who were engaged under them in business. Very often they have to take the place of two or three persons who were employed by them, or in whose employment they may have been. Others are engaged in war work or munitions work or on contracts ancillary thereto. Requests to be excused become more frequent every day. It is not to be wondered at. The national emergency affects them in the same way as it affects everybody else. The reason why I mention it to the Bar is that I hope that, now that attention has been drawn to the matter, members of the Bar, solicitors and litigants will take into consideration the difficulties which there now are in bringing jurymen to the courts, and will agree, so far as they can properly and legitimately do so under advice, to have their cases tried without juries.

There are, of course, numbers of cases, like those of slander and libel, in which invariably one may say that the trial is by a jury. On the other hand, there are cases to be found in the jury lists which, if the parties agreed, might very well be disposed of by a judge without a jury.

I am only asking that, in view of what I have stated, a little more consideration than is usual should be given to this aspect of affairs. I know perfectly well from my own experience at the Bar that whenever one of the parties to an action wishes for a jury it is granted. If litigants and their advisers will bear in mind the special strain which is put on jurymen—and it is only in the interests of the jurymen that I am making this statement—I shall be glad. If they come to the conclusion that any cases which are in the jury lists can properly be tried without a jury, and if they give notice to that effect, such cases shall not lose their place in the lists, but shall be tried in the ordinary way as if they had come before a jury.

After this statement it was arranged that the second and third cases in his Lordship's list for the day should be tried without juries. Later, when a settlement was reached in *Collins v. Hill*, the foreman of the jury told his Lordship that one of the jurors who had been called upon to try the case had had to close his shop for three days owing to his being required to attend in court.

The Deportations of Belgians.

In the House of Commons on Tuesday, says the *Times*, Mr. W. Thorne asked the Under-Secretary for Foreign Affairs whether he was aware that at least 25,000 men had been deported from various parts of Belgium to work in the Rhine Province and Westphalia; if he was aware that the places in question were the centre of the German coal, iron, and steel industry; if he was aware that after the surrender of Antwerp the German military governor gave Cardinal Mercier a solemn written assurance that no Belgians would be deported; if he was aware that this assurance was confirmed by Marshal von der Goltz himself; and if he intended taking any action in the matter.

Lord R. Cecil: I believe the facts stated by the hon. member are all correct. It may be of interest to state that the German officer under whose orders the first deportations from Flanders were carried out is General von Sauberzweig, who, in his former post as military governor of Brussels, was the officer directly responsible for the execution of Miss Cavell. Where atrocities of this kind are committed by such agents in pursuance of the declared policy of the German Government,

mere words by his Majesty's Government can be of no avail. We shall indeed support in every way the action of the Belgian Government, and we shall respond to every call that Government may make upon us, and join our voice on their behalf to every appeal they may make to the judgment and assistance of the civilized world. But the action we chiefly intend to take—the only action which can finally solve this question—is to prosecute the war with all our power, and to make it a cardinal point to secure the liberation of Belgian territory and Belgian citizens from such oppression.

Mr. W. Thorne asked whether the noble lord had seen the recent figures published which disclosed the fact that at least 30,000 Belgians had been deported from Antwerp and district, and at least 16,000 from Ghent and the surrounding districts, and whether his attention had been called to the statement made by Miss Hobhouse that everything in Belgium was lovely under German domination.

Lord R. Cecil: I am afraid these statements are in substance absolutely correct. As to Miss Hobhouse, I have already explained to the House the view the Government take of her statements.

Sir E. Carson: Will the Government on an occasion of this kind press neutrals to exercise all the power possible to prevent breaches of International Law?

Lord R. Cecil: We have done everything we can in that direction. We feel that the appeal comes with the greatest force from the Belgian Government, and we desire to support them in any appeal they may make.

Mr. Butcher: Has the Government of the United States made any protest to the German Government against these barbarities?

Lord R. Cecil: I would like to have notice of that.

Obituary.

*Qui ante diem perit,
Sed miles, sed pro patria.*

Major Lionel Kerwood.

Major LIONEL KERWOOD, Worcestershire Regiment, son of Mr. and Mrs. Alfred Kerwood, Watling House, Barnet Green, was killed on 21st October while attached to the Cheshire Regiment. Major Kerwood, who was thirty years of age, was educated at the Lickey School and Malvern College. He was admitted a solicitor in 1908, and became a partner with his father in the firm of Alfred Kerwood & Son, Redditch. Major Kerwood had always taken a considerable interest in military matters, and while at Malvern he was a member of the Cadet Corps. About twelve years ago he joined the Volunteers at Redditch. He became a captain, and was instrumental in raising a company of Territorials at King's Norton, afterwards obtaining the funds for building a drill hall, which was opened about four years ago. He went to the front a year and eight months ago, becoming senior major, and was for several weeks in command of his battalion during the absence from the front of his colonel. In March, 1913, Major Kerwood married Edna, third daughter of Mr. and Mrs. John Sheldon, Barnet Green. His brother, Lieutenant Malcolm Kerwood, was killed about twelve months ago.

Captain Norman R. Shepherd.

Captain NORMAN ROBINSON SHEPHERD, Durham Light Infantry, was the second son of Mr. A. T. Shepherd, Registrar of the Sunderland County Court, and of Mrs. Shepherd, of The Hawthorns, Sunderland. Born in 1883, he was educated at the Sunderland High School during the headmastership of the Rev. E. M. Adamson, M.A. (now vicar of Beadnell, Northumberland), and on leaving became articled to Messrs. Graham, Shepherd & Sons, solicitors, of Sunderland, with which firm his father was for many years associated in partnership with Mr.

Coroner John Graham, D.L. He was admitted in 1906, and became a junior partner in the firm. He was also Deputy Registrar of the Sunderland County Court. Captain Shepherd joined the Durham L.I. as a private in September, 1914, and six months later received his commission. He had been at the front since July, 1915, and was killed on 4th November while leading his company, to which he had been promoted only about three weeks previously on account (as his colonel wrote) of his bravery and exceptional good qualities. The colonel also added that in the late fighting he had twice mentioned him for distinction, and that his loss to the regiment was very great, and that no man ever did his duty to his country better. The captain under whom he had recently served also wrote, "He was the staunchest of friends and the most gallant of men, and personally he was the bravest man I ever knew. We all loved him and mourn his loss. I had recommended him twice recently for the Military Cross for outstanding acts of bravery and devotion to duty."

Lieut. Basil Every Gill.

Lieutenant BASIL EVERY GILL, Yorkshire Regiment, was killed on 18th October by shell fire in action. The youngest son of Thomas Husband Gill, of Penlee Cottage, Devonport, solicitor, he was educated at Sutton Valence, Kent, and Probus School, Cornwall. After serving three years of his articles with his father, he was gazetted in September, 1914, to the Duke of Cornwall's Light Infantry. Passing into Sandhurst in December, 1914, he was gazetted in May, 1915, to the Yorkshire Regiment, receiving his second star in the July following. He proceeded to the front in September, 1915, and soon after was made acting adjutant of his battalion. Since that time, excepting for short intervals of leave, he has been continually in the fighting line. Although wounded in July, 1916, he remained at duty. A keen member of the Devonport Albion Rugby Club, he played both for chiefs and reserves. The general commanding his division writes, "I knew him well, and I always regarded him as one of the very finest boys in the division. I know his regiment will miss him very sorely, and the Service is poorer without him." He adds, "He had made a name for himself by his fine soldierly qualities and his unswerving devotion to duty." His commanding officer writes, "He will be dreadfully missed in the battalion; everyone liked him, officers and men, and he was keen on the battalion and was proud of it. I wish I could express to you better how 'great' we all thought him and how we all valued him."

Second Lieut. Cecil B. Mellenfield.

Second Lieutenant CECIL BEVEN MELLENFELD, South Lancashire Regiment, who was killed on 23rd October, was the third son of Mr. and Mrs. James Henry Mellenfield, of Lee, Kent (formerly of Stamford Hill). Born in 1883, he was educated at Surrey House School, Margate, and matriculated at London University in 1901. He served his articles with Messrs. Hores, Pattison & Bathurst, solicitors, of Lincoln's Inn Fields, and, after being admitted in 1906, remained with them until he took up the position of managing clerk to Messrs. Nisbet, Daw & Nisbet, of 35, Lincoln's Inn Fields. In October, 1914, he enlisted in the Middlesex Regiment, and obtained his first and second stripes. He was gazetted to the South Lancashire Regiment on 1st April, 1915, and went to the front early in the following October.

Legal News.

Appointments.

The Right Hon. Sir FREDERICK SMITH, K.C., M.P., has been elected Treasurer of the Honourable Society of Gray's Inn for the year 1917, in succession to Sir William Byrne, K.C.V.O., C.B.

Mr. J. BINDER DUNNING, chief clerk to Taxing Master Alexander, has been appointed Captain and Adjutant of the National Guard, City of London Regiment.

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APPLY FOR PROSPECTUS.



General.

The Dublin correspondent of the *Times* in a message of Tuesday says:—It is reported that Lord Chief Justice Cherry is about to resign his office on grounds of health. In that event he is likely to be succeeded by Mr. James H. Campbell, the present Attorney-General, and Mr. James O'Connor, Solicitor-General, will probably succeed Mr. Campbell. The new Solicitor-General will probably be a Unionist.

Mr. Herbert Robertson, of Lincoln's Inn and Huntington Castle, co. Carlow, barrister-at-law, Conservative M.P. for South Hackney from 1895 to 1906, left estate of gross value £59,374.

Mr. F. Armitage, of Monument Station Buildings, 53 and 54, King William-street, E.C., in a letter to the *Times*, says:—May I, as a practising solicitor, suggest that part of this war-time trouble as to juries will be solved if powers are at once obtained to limit the number of a jury to eight, instead of twelve, following the practice of the county courts? It is found that this is a very convenient number, as when they come to discuss their verdict in the jury-box they easily resolve themselves into two groups of four each.

Lieutenant Raymond Asquith, Grenadier Guards, of Bedford-square, W.C., barrister-at-law, eldest son of the Prime Minister, who was killed in France on 15th September, aged thirty-seven, has left unsettled estate of the value of £3,189, of which £2,011 is net personality. By his holograph will, dated 19th October, 1915, and made on a sheet of notepaper, headed 10, Downing-street, Whitehall, he gave everything he might die possessed of to his wife, Mrs. Katharine Frances Asquith, adding, "Many of my friends would like books or other things of mine for remembrance. She will know what to give, and to whom."

In the House of Commons on Tuesday, Mr. Asquith, in answer to Sir E. Beauchamp and Mr. Buxton, said:—As I have already informed the House, the Government are considering whether any alteration is necessary in their policy as regards injuries and loss of life in this country due to enemy operations. But I see no reason to alter the scheme of insurance against material losses due to this cause, which I believe is generally regarded as adequate. Sir E. Beauchamp asked whether the Government could not accept the suggestion that the additional premium charged for loss or damage caused by aircraft or bombardment should be remitted and dispensed with, as the charge fell only upon those dwelling on the coast, who had already suffered severely. Mr. Asquith: That is being considered. Mr. Hogge inquired when the decision concerning the loss of lives would be given. Mr. Asquith: I cannot say. It is a very urgent matter.

In the House of Commons on Tuesday, in reply to Mr. Ronald M'Neill, Mr. Bonar Law said:—As regards the conditions of the sale of enemy properties in Nigeria, besides some verbal alterations, the more important additions were:—(a) To provide that I might disallow any purchase if I did not approve of the purchaser; (b) to prevent the transfer of trade-marks to enemy interests; and (c) to prevent the use in the trade-marks sold of the name or initials of any enemy firm or a reference to its establishment in enemy territory. I am not yet aware whether any of the lots were purchased by neutrals. Some of the trade-marks given in the catalogue were for various reasons not offered for sale. The gross amount realized at the sale was £383,674, but in what way the balance obtained from the sale of enemy property will ultimately be disposed of it is at present impossible to say.

The first meeting was held on Monday at Bankruptcy Buildings of the creditors of Mr. Edgar Alexander Baylis, solicitor, of the Guildhall, E.C., against whose estate a receiving order was made on 24th October. Mr. Daniel Williams, Assistant Official Receiver, who presided, said that proofs of debt amounting to £11,174 had been lodged. The debtor had stated that he was admitted in 1864 and until 1898 practised in partnership. He was then appointed Comptroller of the Corporation of the City of London at a salary of £2,000 a year. Since the receiving order he had tendered his resignation, but it had not yet been dealt with. Some years ago he bought 56 acres of freehold land for £2,600, with the intention of building a house for himself. He had been unable to procure the money for building. The property was now mortgaged for £5,000. He attributed his insolvency to losses on this purchase and to interest on borrowed money. The meeting was adjourned to 19th December for the debtor to submit a scheme for the arrangement of his affairs.

At a Court-martial held on the 15th inst. at Longbridge Deverill, near Warminster, Stephen Hobhouse, son of Mr. Henry Hobhouse, was charged with refusing to obey military orders. He was arrested in London as an absentee and taken under escort to a camp of the London Regiment, where he refused to put on uniform. The accused said his faith in Christ compelled him to refuse so far as he reasonably could to be involved in any organization for the purpose of human bloodshed. He was an International Socialist, and could take no part in war or violence designed either to attack or defend life or property. It was exclusive wealth in material things that promoted aggression, and he believed that the lives both of ourselves and our children would not be threatened by Germans or any other men were we ready rather than do violence to the aggressor to abandon to him in a spirit of love our own excessive share of the world's wealth. Lord Courtney of Penwith said that the accused was his nephew, and had become a convinced member of the Society of Friends. Lord Courtney added that he believed the only way of dealing with such men was the way adopted by Napoleon, Catherine II., and Pitt—namely, to dismiss them and have nothing to do with them. Mr. Stephen Hobhouse, together with ten other conscientious objectors, has since been sentenced to six months' imprisonment with hard labour. They have been removed to Wormwood Scrubs.

Court Papers.

Supreme Court of Judicature.

ROTA OF REGISTRARS IN ATTENDANCE ON					
Date.		EMERGENCY ROTA.	APPEAL COURT No. 1.	Mr. Justice NEVILLE.	Mr. Justice EVELL.
Monday	Nov. 27	Mr. Church	Mr. Borrer	Mr. Synges	Mr. Groswell
Tuesday	.....	38 Farmer	Leach	Borrer	Church
Wednesday	..	29 Synges	Goldschmidt	Jolly	Leach
Thursday	....	30 Jolly	Farmer	Bloxam	Borrer
Friday	Dec. 1	Bloxam	Church	Goldschmidt	Synges
Saturday	....	2 Groswell	Synges	Farmer	Jolly
Date.		Mr. Justice SARGANT.	Mr. Justice ASTBURY.	Mr. Justice YOUNGER.	Mr. Justice PETERSON.
Monday	Nov. 27	Mr. Jolly	Mr. Farmer	Mr. Goldschmidt	Mr. Leach
Tuesday	.....	28 Groswell	Synges	Bloxam	Elliman
Wednesday	..	29 Borrer	Bloxam	Farmer	Church
Thursday	....	30 Synges	Goldschmidt	Church	Groswell
Friday	Dec. 1	Farmer	Leach	Groswell	Jolly
Saturday	....	2 Bloxam	Church	Leach	Borrer

The Property Mart.

Result of Sale.

At Messrs. FOSTER & CRANFIELD'S Sale at the Mart, E.C., on Thursday last, 15,507 Shares of £1 each in the well-known Music Publishing Firm of Augener, Ltd., were sold for £7,701 11s. 6d., and a Mortgage Debt for £10,000 secured on the Camberwell Palace of Varieties and the "Golden Lion" Public House, Denmark Hill, sold for £7,350.

Creditors' Notices.

Under 22 & 23 Vict. cap. 35.

LAST DAY OF CLAIM.

London Gazette.—TUESDAY, NOV. 14.

ARTHUR, LUCRETIA, Keymer, Sussex	Dec 11	Cane, Brighton
ATEKINSON, FRIEND, Leeds, Coal Agent	Dec 9	Isen & Hollings, Leeds
BARKER, EMMA, Leigham Court rd, 8, Leatham	Dec 20	Colyer & Colyer, Clement's inn
HATT, ARTHUR JOSEPH, Leytonstone	Dec 15	Richardson, High rd, Wood Green
BLACKBURN, THOMAS, Outwood, nr Wakefield	Dec 31	Haworth, Wakefield
BRINDLE, Right Rev ROBERT, Chesterfield	Dec 16	Wake & Sons, Sheffield
CARNELL, SARAH ANN, Sutton cum Loud, Notts	Nov 25	Besoboy & Williamson, East Retford
CHALLICE, ELIZABETH, Coverdale rd, Shepherd's Bush	Dec 22	Parker & Co, St Michael's Rectory, Cornhill
DERINGTON, WILLIAM WRIGHT, Newport, Salop, Maltster	Dec 15	Fowler & Co, Wolverhampton
DEVINE, WALTER, South Woodford, Essex, Warehouse Manager	Dec 14	Russell, Broadway, Bexley Heath
DIXON, ANN, Lancaster	Dec 10	Grime, Hawes, Yorks
DUCKETT, GEORGE HERBERT, Knowle, Warwick	Dec 14	J & L Clark, Smethwick
EDMONDSON, SARAH ANN, Platts in, Hampstead	Dec 14	Russell & Arnhoft, Great Winchester st
ELLIS, DAN, Prestbury, nr Cheltenham	Dec 18	Heath & Eckersall, Cheltenham
ETTY, Rev ANDREW HOOVER, Winchester	Dec 31	Morrell & Co, Oxford
GANE, HENRY GEORGE, Birmingham, Undertaker	Nov 25	Daggan & Elton, Birmingham
GARDNER, ALICE, Bath	Dec 12	Macdonald & Longrigg, Bath
GRAY, WILLIAM, Hertford, Contractor	Jan 16	Longmore & Co, Hertford
HADFIELD, CHARLES JAMES, Bowdon, Chester	Dec 23	Lawson & Co, Manchester
HARDCASTLE, GEORGE, Quebec, Durham, Greengrocer	Dec 19	Smith & Co, Sheffield
HASSELL, CLARA LOUISA, Bourne south	Dec 16	Langton, Fall Mall East
HAYLEY, CYRIL WILLIAM SEAFORTH BURELL, Fanton st, Haymarket	Dec 12	Maddison & Co, Old Jewry chambers
HENNEKE, FREDERICK CHRISTIAN, Beckenham, Kent	Dec 10	Jenson & Co, College Hill
HEWITT, FREDERICK ARTHUR, Richmond, Surrey, Licensed Victualler	Dec 14	Finlay & Co, High rd, Chiswick
HOLMES, LAURET, Hove, Sussex	Dec 18	Cockburn & Co, Hove
HUNT, JAMES CHARLES MARJORIBANKS, Winchester	Dec 11	Johnson & Co, New sq
JACKSON, RICHARD WILLIAM CROFTS, Whitwell, Derby, Farmer	Dec 19	Smith & Co, Sheffield
JOHNSON, ELIZABETH ANN, Kendal	Dec 14	Thompson & Wilson, Kendal
KIMICK, JOSEPH, Hemel Hempstead, Herts, Jeweller	Dec 13	White, Highborn viaduct
KIRK, MARY EMMA, Wallington, Surrey	Dec 14	Bate, Wrexham
LANCASTER, GEORGE SNOW, JP, Watlingtonville, Hants, Naval Outfitter	Dec 30	Blake & Co, Portsmouth
MACPHERSON-GRANT, Dame FRANCES ELIZABETH, Hereford gds, Park in	Dec 9	Slope & Co, Putney Hill
METCALFE, JANE, Camden rd, Camden Town	Dec 31	Surtees & Co, St Helen's pl
MORLEY, SAMUEL, Nottingham	Nov 22	Simpson & Lee, Nottingham
OSBURY, FANNY HENRIETTA, Florence, Italy	Dec 16	Foy & Co, Essex st
RANSAY, ELIZABETH, Chester le street, Durham	Dec 12	Griffith & Co, Newcastle on Tyne
SALMON, HARRIETT MARIA, Bagnall, nr Stoke on Trent	Dec 9	Ashmall, Hanley
SALMON, GEORGE WOOLSCROFT, Stanley Moor, nr Stoke on Trent, Farmer	Dec 9	Ashmall, Hanley
SEDGWICK, FREDERICK WILLIAM, Stopford rd, Manor Park	Dec 14	E G & J W Chester, Newington butts
SMALLWOOD, FRANK, Moseley, Birmingham, Commercial Traveller	Dec 16	Frost, Birmingham
SMITH, JANE, Chipping Norton, Oxford	Dec 23	Wilkins & Toy, Chipping Norton
STANISLAS, LOUIS, Chelham rd, Clapham, Printer	Dec 23	Gard & Co, Gresham bldg, Basinghall st
STARBUCK, RICHARD HENRY, Gravesend, Kent	Dec 13	Martin & Son, Gravesend
STEWART, KATE, Manchester	Dec 12	Stand, Manchester
UPTON, SAMUEL, Semaphore, South Australia, Marine Engineer	Nov 30	Bedford & Welsted, Newhaven, Sussex
WOODCOCK, ANN, Leamington	Dec 12	Field & Sons, Leamington

The "Oxford" Sectional Bookcase is the ideal one for anybody who is building up a library. It is splendidly finished, with nothing of the office stamp about it. The illustrated booklet issued by the manufacturers, William Baker & Co., Ltd., The Broad, Oxford, may be obtained gratis, and will certainly prove interesting to book lovers.—(Adv.)

